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Interstate Waste Services of New Jersey, Inc. and International Brotherhood of Teamsters, Local 945. Case 22–CA–27216

May 18, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on December 28, 2005, the General Counsel issued the complaint on January 5, 2006, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 22–RC–12605. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, with affirmative defenses, admitting in part and denying in part the allegations in the complaint.

On February 1, 2006, the General Counsel filed a Motion for Summary Judgment. On February 3, 2006, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response, and the General Counsel filed a reply.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification based on its objections to conduct alleged to have affected the results of the election in the representation proceeding. Specifically, the Respondent contends that the Union was improperly certified because the actions of the Union's observer and the Board Agent destroyed the laboratory conditions and warrant setting aside the election. In addition, the Respondent maintains that the certified unit is no longer appropriate due to the integration of the operations at the Respondent's Newark facility, where the certified unit was located, into the operations at the Respondent's facilities in Jersey City and Sloatsburg, New Jersey, which were purchased after the election took place.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.

With respect to the Respondent's contention that the certified unit no longer remains appropriate due to changes in its operation since the date of the election, we find that the Respondent has failed to show that with due diligence it could not have brought forth evidence pertaining to the integration of its Newark facility into its Jersey City and Sloatsburg operations within a reasonably short period of time after that integration. The Respondent, in its December 29, 2005 refusal to bargain, did not rely on the alleged integration of September 2005. Furthermore, the Respondent first brought this evidence to the Board's attention in its response to the Notice to Show Cause, which was filed on February 15, 2006, despite the fact that the purchase of the Jersey City and Sloatsburg facilities and the integration of the Newark operations allegedly occurred on September 3, 2005. This date was more than 2 months before the Board issued its certification of representative in Case 22–RC–12605. Further, we note that this date was approximately 2 weeks before the Respondent filed its Exceptions to the Hearing Officer's Report on Objections, which are dated September 19, 2005. In these circumstances, we find that the alleged evidence should not be considered newly discovered or previously unavailable and does not constitute special circumstances warranting relitigation of issues raised in the representation proceeding.¹ We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a New Jersey corporation with offices and a place of business in New-

¹ See *U-Haul Co. of Nevada, Inc.*, 345 NLRB No. 118 (2005) (Board held that the respondent failed to show that with due diligence it could not have brought forth evidence pertaining to the closure of its facility within a reasonably short time after its implementation, where closure occurred approximately 2 months before the Board's certification of representative issued in the related representation proceeding).

² Consequently, we deny the Respondent's request for a hearing.

ark, New Jersey, has been engaged in the transportation and handling of solid waste.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, provided services valued in excess of \$50,000 directly to customers outside the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that International Brotherhood of Teamsters, Local 945 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held June 3, 2005, the Union was certified on November 21, 2005, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time drivers and driver's helpers employed by the Employer at its Newark, New Jersey location, but excluding all office clerical employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

About December 2, 2005, the Union requested the Respondent to bargain with it as the exclusive collective-bargaining representative for the certified unit.

Since on or about December 29, 2005, the Respondent, has failed and refused to bargain with the Union.³ We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(1) and (5) of the Act.

CONCLUSION OF LAW

By refusing on and after December 29, 2005, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(1) and (5) of the Act, we shall order it to cease and

desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Interstate Waste Services of New Jersey, Inc., Newark, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Brotherhood of Teamsters, Local 945 as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time drivers and driver's helpers employed by the Employer at its Newark, New Jersey location, but excluding all office clerical employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Newark, New Jersey, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places,

³ The complaint alleges that the Respondent has refused to bargain since December 2, 2005. The General Counsel, however, has attached to his motion a letter dated December 29, 2005, in which the Respondent informs the Union that the Respondent will challenge the Union's certification and will not bargain with it.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 29, 2005.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., May 18, 2006

Robert J. Battista,	Chairman
Wilma B. Liebman,	Member
Peter C. Schaumber,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with International Brotherhood of Teamsters, Local 945 as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time drivers and driver's helpers employed by us at our Newark, New Jersey location, but excluding all office clerical employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

INTERSTATE WASTE SERVICES
OF NEW JERSEY, INC.